



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Jane Wallis Gumble, Director

**Guidelines for the Planned Production Regulation**  
**under MGL Chapter 40B**  
**760 CMR 31.07(1)(i)**

## **Introduction**

These guidelines describe the process and requirements for local development of an affordable housing plan, submission of the plan for state approval, and certification of municipal compliance with the plan in accordance with the Planned Production regulation promulgated by the Department of Housing & Community Development (DHCD) in December 2002.

In accordance with the regulation, cities and towns may:

- Develop and adopt an affordable housing plan for approval by DHCD; and
- Request certification of compliance with the approved plan by demonstrating an increase in low and moderate income housing units within one calendar year of at least  $\frac{3}{4}$  of one percent (.75%) of total year round housing units (based on the 2000 Census) pursuant to the plan.

In a certified municipality, decisions by the Zoning Board of Appeals (ZBA) to deny or approve with conditions comprehensive permit applications will be deemed “consistent with local needs” under MGL Chapter 40B for a one year period following certification that it has produced .75% of total housing units or two years if it has produced 1.5% of total housing units pursuant to the approved plan. “Consistent with local needs” means that the decision will be upheld by the Housing Appeals Committee (HAC).

## **The Affordable Housing Plan**

### ***What is it?***

An affordable housing plan is a plan that identifies the housing needs of the community and the strategies by which the municipality will make progress in developing affordable housing. The plan must be consistent with the regulation and these guidelines.

In many cases, it is not necessary for a community to create an entirely new plan to meet the requirements. Many communities have already adopted a plan or a series of plans that contain some or all of the required elements. Executive Order 418 Community Development Plans and Housing Strategies, in particular, may contain most if not all of the necessary information. Current master plans, consolidated plans, or other housing strategies may also contain some or all of the elements of an affordable housing plan. Note that if an existing plan is older than five

years, supplemental information may be requested by DHCD to demonstrate that the plan is current and in active use.

### ***What is required?***

The plan must contain at least the following three sections:

#### **Section 1. Comprehensive Housing Needs Assessment<sup>1</sup>**

Overall, the plan must establish a context for municipal action with regard to housing based on a comprehensive housing needs analysis that examines:

1. Community demographics;
2. Existing housing stock characteristics;
3. Development conditions and constraints and the municipality's ability to mitigate those constraints; and
4. The capacity of municipal infrastructure, such as schools, water/sewer systems, roads, utilities, etc.

#### **Section 2. Affordable Housing Goals and Strategies**

In this section, the plan must include:

- A discussion of the mix of housing desired, consistent with identified needs and feasible within the housing market, including rental and ownership for families, individuals, persons with special needs, and the elderly;
- A numerical goal for annual housing production that meets or exceeds the .75% threshold (see Attachment A for a listing of thresholds by community) for each calendar year included in the plan;
- A timeframe or schedule for production of units; and
- An explanation of the specific strategies the community will use to achieve its housing production goal, including identification of one or more of the following:
  1. Geographic areas in which land use regulations will be modified to accomplish affordable housing production goals;
  2. Specific sites on which comprehensive permit applications are to be encouraged;
  3. Preferred characteristics of residential development, for example infill housing development, clustered houses, and compact development; and/or
  4. Municipally owned parcels for which development proposals will be sought.

A community's plan may also address other local actions to accomplish its housing goals.

#### **Section 3. Description of Use Restrictions**

This part must describe the long-term use restrictions that will be placed on the affordable housing units. Include details on the time period covered by the deed restriction and how the future sale or rent price will be calculated. A sample deed restriction may be attached.

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<sup>1</sup> The Massachusetts Housing Partnership (MHP) offers a useful publication on doing a needs assessment entitled *Housing Needs Workbook* that is available online at [www.mhp.net](http://www.mhp.net).

### ***How and when does a municipality submit a plan for approval?***

Municipalities that develop a plan in accordance with the regulation may submit it to DHCD at any time. The plan must be accompanied by a letter from the municipality's chief elected official<sup>2</sup> attesting that the submission constitutes the municipality's affordable housing plan and requesting approval from DHCD. The letter should also include a contact name and number.

If a municipality submits an existing plan for approval, the submittal must be accompanied by an Executive Summary of the plan that summarizes the plan in terms of the required elements, cites the location of information in the plan that meets the requirements, and explains why the community believes the materials satisfy the requirements.

The plan may be submitted in hard copy or electronic copy, however, once approval is issued, DHCD must be provided an electronic copy for posting on the Planned Production webpage. Electronic copies can be submitted by e-mail or on disk.

Send plans to:

Jane Wallis Gumble, Director  
Department of Housing & Community Development  
Attn: Office of Policy Development  
100 Cambridge Street, Suite 300  
Boston, MA 02114

Or e-mail to:

MaryJane.Gandolfo@ocd.state.ma.us

### ***How does DHCD evaluate the plans?***

DHCD will review each plan for completeness of the above required elements and for the municipality's commitment to achieve the production required in the regulation, i.e. an increase of at least  $\frac{3}{4}$  of 1% of year round housing units.

DHCD has 90 days to approve or disapprove a complete plan. The 90-day review period does not start until a complete plan is received by DHCD. If a municipality submits a plan that the agency finds deficient, DHCD will notify the community of the deficiency. The municipality will have as much time as needed to submit the necessary changes. The 90-day review period will begin when the completed plan is submitted.

If DHCD disapproves a plan, the agency will notify the municipality as to the reasons for disapproval. The municipality may revise and resubmit a plan in response to disapproval. A municipality may also amend a plan at any time. Resubmissions and amendments must be accompanied by an updated letter from the chief elected official, as above.

### ***When does an approved plan become effective?***

Once a plan is approved, it will be deemed effective retroactive to the date the complete plan was received by DHCD. If amendments are submitted for an already approved plan, the original effective date will hold.

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<sup>2</sup> The chief executive officer may submit the plan if given signatory authority by a local charter.

## **Certification of Compliance with the Affordable Housing Plan**

### ***What is it?***

A municipality will be certified compliant with an approved affordable housing plan if, during a calendar year, it has increased its number of low and moderate income housing units in an amount equal to or greater than that enumerated in the approved plan.

### ***What does it mean?***

If a municipality is certified compliant, decisions made by the ZBA will be deemed “consistent with local needs” under MGL Chapter 40B by the Housing Appeals Committee. If the HAC deems a ZBA action to be consistent with local needs, the ZBA’s denial or approval with conditions of a comprehensive permit application will be upheld as a matter of law.

### ***How does a municipality request certification?***

Municipalities with an approved affordable housing plan may request certification of compliance with their plan by submitting evidence that the required number (see Attachment A) of housing units have been produced during a calendar year that:

1. Are eligible to be counted on the Subsidized Housing Inventory (SHI)<sup>3</sup>; and
2. Are produced pursuant to the affordable housing plan.

The units must be produced after the effective date of an approved affordable housing plan. Certification cannot be requested for units produced in prior years except as allowed in the regulations and these guidelines. Municipalities submitting an existing plan, such as a master plan, that ultimately gets approved as an affordable housing plan can count units produced before the plan is submitted as long as they were produced within the same calendar year as the plan submittal and in accordance with the provisions of the plan. Municipalities are allowed to count all units produced between August 1, 2002 and December 31, 2002 towards production for the first year they request certification.

Communities must submit their documentation of units using the Requesting New Units Form for the Subsidized Housing Inventory (see Attachment B).

Communities should submit certification requests by mail to:

Department of Housing & Community Development  
Office of Policy Development  
100 Cambridge Street, Suite 300  
Boston, MA 02114

Or by e-mail to:

MaryJane.Gandolfo@ocd.state.ma.us

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<sup>3</sup> Regulations allow units to be added to the SHI at the earliest of 1) when a comprehensive permit becomes final; 2) when a building permit is issued (for units not created under a comprehensive permit); or 3) when an occupancy permit is issued (for existing units). Note that comprehensive permit units are removed from the SHI if a building permit has not been issued within one year from the date the comprehensive permit becomes final. For existing units that do not require an occupancy permit, such as in a “buy-down” program, we will count the units when the deed restriction and/or regulatory agreement is final.

***When can certification be requested?***

Requests for certification can be submitted at any time during the calendar year in which the units are produced and up to January 10 of the following year.

***When does certification become effective? How long does it last?***

The effective date of certification is retroactive to the date DHCD received the request for certification with the exception that requests made between January 1 and January 10 of the following year will be deemed to have been made on the last business day of the prior year. For example, certification requested on September 10, 2004 will be effective on September 10, 2004. Certification requested on January 10, 2005 for units produced in 2004 will be effective on December 31, 2004.

Certification lasts for one year if the municipality has produced .75% or two years if it has produced 1.5%. For example, a municipality requests certification on June 14, 2004 for affordable units produced in 2004 totaling .75% of housing units. The certification period begins on June 14, 2004 and ends on June 13, 2005. If the request were based on an increase of 1.5% of housing units, the certification period would end on June 13, 2006.

***How does DHCD evaluate a certification request?***

DHCD will evaluate whether the housing units identified:

- Have been newly produced pursuant to the approved affordable housing plan;
- Are eligible for inclusion on the Subsidized Housing Inventory; and
- Total at least .75% of year round housing units.

If a request meets these requirements, DHCD will certify that the municipality is in compliance with its plan. DHCD will make this determination within 30 days of receiving a request for certification.

**Contact Information**

For questions or further information, please call 617-573-1350 or send e-mail to [Phillip.DeMartino@ocd.state.ma.us](mailto:Phillip.DeMartino@ocd.state.ma.us).

Or visit the webpage at [www.mass.gov/dhcd/ToolKit/PProd/default.htm](http://www.mass.gov/dhcd/ToolKit/PProd/default.htm) .

**Attachments**

- A: Spreadsheet of .75% and 1.5% thresholds for each community
- B: Requesting New Units Form – Subsidized Housing Inventory